

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAMION THOMAS,

Plaintiff,

v.

HENRI FISCHER,

Defendant.

CASE NO. 2:24-cv-01056-JCC-DWC

ORDER DECLINING TO SERVICE
COMPLAINT

Plaintiff Damion Thomas, proceeding *pro se*, filed this civil rights action under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint under 28 U.S.C. § 1915A, the Court declines to serve the complaint but provides Plaintiff leave to file an amended pleading by September 25, 2024, to cure the deficiencies identified herein.

I. Background

Plaintiff is an inmate currently confined at Coyote Ridge Corrections Center. Dkt. 3 at 2. It appears Plaintiff has filed this action for events occurring at Monroe Correctional Complex as the sole defendant named in this action is Henri Fisher, who Plaintiff says is the Chaplain at that facility. *Id.* at 3.

1 After obtaining a permit to order religious beads, Petitioner alleges he ordered beads from
2 an authorized dealer. *Id.* at 4. On or around February 19, 2021, Defendant Fischer informed
3 Plaintiff that his bead package exceeded the allowable weight. *Id.* at 4–5. Plaintiff maintains that
4 the beads minus the packaging were within the three-pound weight limit. *Id.* Despite this,
5 Plaintiff alleges Defendant Fischer gave Plaintiff “two options not authorized by the
6 Department” for resolving the issue with the overweight package. *Id.* at 5. One of these options
7 was to accept delivery of the bead package and incur a restriction on ordering beads. *Id.* at 13.
8 Plaintiff states he “made disagreements” with the options presented and, after this, the Defendant
9 sent Plaintiff his bead package. *Id.* at 5.

10 Plaintiff states that he attempted to order new beads in May 2021, but the order was
11 delayed by the Defendant (presumably as a result of a bead-ordering restriction). *Id.* at 14.
12 Plaintiff notes that an “investigation by the Department” found Defendant Fischer retaliated
13 against him for filing a grievance. *Id.* at 5. However, Plaintiff does not explain when that
14 grievance was filed, what it entailed, and what specific act was reviewed in the investigation.

15 As relief, Plaintiff seeks monetary damages. *Id.* at 9.

16 **II. Screening**

17 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
18 complaints brought by prisoners seeking relief against a governmental entity or officer or
19 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
20 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
21 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
22 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
23 152 F.3d 1193 (9th Cir. 1998).

1 The Court is required to liberally construe *pro se* documents. *Estelle v. Gamble*, 429 U.S.
2 97, 106 (1976). However, even *pro se* pleadings must raise the right to relief beyond the
3 speculative level and must provide “more than labels and conclusions, and a formulaic recitation
4 of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
5 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

6 **III. Discussion**

7 In his Complaint, Plaintiff alleges a single claim of First Amendment retaliation against
8 Defendant Fischer in his individual capacity. *See* Dkt. 3 at 4–5. Plaintiff’s claim is deficient and
9 must be cured before he may proceed in this action. The Court will address the pleading
10 deficiencies below.

11 To plead a claim under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a
12 violation of rights protected by the Constitution or created by federal statute, and (2) the
13 violation was proximately caused by a “person” acting under color of state law. *See Crumpton v.*
14 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Thus, the first step in pleading an individual
15 capacity § 1983 claim is to identify the specific constitutional right allegedly infringed. *Albright*
16 *v. Oliver*, 510 U.S. 266, 271 (1994). On step two, a plaintiff must allege facts showing how the
17 individual defendants caused, or personally participated in causing, the harm alleged in the
18 complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

19 “It is well-established that, among the rights they retain, prisoners have a First
20 Amendment right to file prison grievances. Retaliation against prisoners for their exercise of this
21 right is itself a constitutional violation, and prohibited as a matter of clearly established law.”
22 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009) (internal quotations omitted). A “viable
23 claim of First Amendment retaliation” in the prison context must include: (1) An assertion that a
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1 state actor took some adverse action against an inmate (2) because of (3) that inmate's protected
2 conduct, and that such action (4) was capable of chilling the expression of a person of ordinary
3 firmness, and (5) the action did not reasonably advance a legitimate correctional goal. *Id.* at
4 1269–71 (citing *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005)).

5 Here, Plaintiff's allegations touch on each of the necessary elements for a retaliation
6 claim, but they are cursory and lack sufficient factual detail to state a viable claim. Plaintiff
7 alleges he "made disagreements" with options provided to him by the Defendant. Dkt. 3 at 5.
8 Assuming Plaintiff is referencing the submission of a formal or informal grievance, this
9 allegation may relate to the protected conduct element of his claim. Plaintiff next alleges the
10 Defendant restricted him from ordering beads for a six-month period and possibly delayed a bead
11 order made during that period. Dkt. 3 at 5, 14–15. These allegations may relate to the adverse
12 action element of his claim. But, to state a claim for retaliation, an adverse action must be taken
13 "because of" an inmate's protected conduct. *Rhodes*, at 567.

14 As it stands, the Complaint does not contain sufficient facts showing how Plaintiff's
15 disagreements motivated the Defendant to take any adverse action against him. Plaintiff also
16 does not specify whether it was the bead restriction, or something else, that he considers to be an
17 adverse action motivated by this potentially protected conduct. Because the Complaint states the
18 Defendant advised Plaintiff that, if Plaintiff chose to accept delivery of the bead package, he
19 would incur a restriction on ordering beads *before* Plaintiff communicated his disagreements, it
20 is unlikely Plaintiff will be able to demonstrate the Defendant's actions taken pursuant to that
21 restriction were "because of" those disagreements.

22 In sum, the Complaint is lacking in detail and fails to draw the necessary causal
23 connection between Plaintiff's potentially protected conduct and any adverse action allegedly
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1 taken by the Defendant. To cure these deficiencies, Plaintiff should include approximate dates or
2 date ranges on which key events took place.¹ He should more fully explain what his
3 disagreements entailed, how they were communicated (*i.e.*, verbally, in writing, formally, and/or
4 informally), to whom, and when. Plaintiff should also explain what—if anything—the Defendant
5 knew about his disagreements and/or grievances along with how (and when) the Defendant may
6 have obtained this information. Finally, Plaintiff should specify what adverse action he believes
7 was taken against him, when that action was taken, and describe the effect that action had on him
8 and/or how it may have affected someone in his position.

9 **IV. Instructions**

10 Due to the deficiencies described above, the Court will not serve Plaintiff's complaint. If
11 Plaintiff intends to pursue this § 1983 civil rights action, he must file an amended complaint and
12 within it, he must write a short, plain statement telling the Court: (1) the constitutional right
13 Plaintiff believes was violated; (2) the name of the person who violated the right; (3) exactly what
14 the individual did or failed to do; (4) how the action or inaction of the individual is connected to
15 the violation of Plaintiff's constitutional rights; and (5) what specific injury Plaintiff suffered
16 because of the individual's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). Each
17 claim for relief must be simple, concise, and direct.

18 Plaintiff shall present the amended complaint on the form provided by the Court. The
19 amended complaint must be legibly rewritten or retyped in its entirety, it should contain the same
20 case number, and it may not incorporate any part of the previous complaints by reference. The
21 amended complaint will act as a complete substitute for any previously filed complaint, and not as
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23 ¹ As § 1983 claims filed in the State of Washington are subject to a three-year limitations period, including
24 key dates in his amended pleadings is critical to the viability of Plaintiff's claim. *Rose v. Rinaldi*, 654 F.2d 546, 547
(9th Cir. 1981).

1 a supplement. Plaintiff should not attach exhibits to the amended complaint and any exhibit will
2 not be considered as part of the amended complaint.

3 The Court will screen the amended complaint to determine whether it contains factual
4 allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will not
5 authorize service of the amended complaint on any defendant who is not specifically linked to a
6 violation of Plaintiff's rights. If Plaintiff fails to file an amended complaint or fails to adequately
7 address the issues raised herein on or before September 25, 2024, the undersigned will recommend
8 dismissal of this action.

9 The Clerk of Court is directed to send Plaintiff the appropriate forms for filing a 42
10 U.S.C. § 1983 civil rights complaint and for service. The Clerk is also directed to send copies of
11 this Order and *Pro Se* Instruction Sheet to Plaintiff.

12 Dated this 26th day of August, 2024.

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15 David W. Christel
16 United States Magistrate Judge
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